

CHAPTER 10.

ADVERTISING

10.1 Objective. The objective of the Advertising Rules is to require truthful and accurate advertising practices for the benefit of consumers. Also, these rules provide a “level playing field” for all dealers. The Advertising Rules can be found at 43 TAC §§ 215.241 – 215.271, and apply to both new and used motor vehicles unless explicitly stated otherwise in the rule.

10.2 Advertisement. The definition of an advertisement is “An oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line computer service, or on television.”

What is an Advertisement?

“Advertisement” means an oral, written, graphic, or pictorial statement made in the course of soliciting business..” 215.244(1)

Newspapers	Displays	Pamphlets
Magazines	Circulars	Letters
Notices	Direct Mail	Banners
Signs	Radio	Soap Signs
Posters	Internet	Business Cards
Flyers		Television

Does not include an in-person oral communication by a dealer’s employee with a prospective purchaser.

The Advertising Rules include the general prohibition and specific rules which address certain forms of advertising.

10.3 General Prohibition. A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. Advertised representations shall not convey a mistaken impression. The following are two examples of misleading advertisement.



NO IT'S NOT.

THIS IS FALSE AND MISLEADING - 215.242



There is no such event. And there is no "Department of Unclaimed Vehicles".

False and Misleading - 215.242

10.4 Availability of New Motor Vehicles. The advertisement must set forth the number of vehicles available for sale at the advertised price if the dealer does not have available a reasonable, expectable public demand based on prior experience.

If the advertisement pertains to only one specific vehicle, that fact must be disclosed along with the vehicle's stock number or VIN.

If the dealer does not have possession of the new vehicle at the time the advertisement is placed, then you need to disclose that the vehicle may be obtained from the manufacturer or distributor or some other source.

10.5 Availability of Used Motor Vehicles. At the time the advertisement is placed, the dealer must have an assigned title certificate and possession of the used vehicle.

10.6 Accuracy. All advertised statements shall be accurate, clear, and conspicuous. And all language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

Consumers must be able to see and read or hear the information being disclosed. Such factors as size, duration, and location of a disclosure, and the background or other information in the advertisement can affect whether the disclosure is clear and conspicuous.

**All Advertised Statements Shall Be
ACCURATE, CLEAR, AND CONSPICUOUS –
215.246**



SIZE

COLOR

Contrast

“CLEAR and CONSPICUOUS” is defined under 8.244(7) as being of such size, color, contrast, and audibility and is presented so as to be *readily noticed and understood*.

10.7 Untrue Claims. The following statements are prohibited.

a. Statements such as “write your own deal,” “name your own price,” “name your own monthly payments,” or statements with similar meaning.

b. Statements such as “everybody financed,” “no credit rejected,” “we finance anyone,” and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit. Certain similar statements are “credit problems, no problem,” “all applications accepted,” and “no credit application refused”.

Statements such as “financing available,” “let us help,” and “conditional offer of credit” are acceptable, and may be advertised.

c. Statements representing that no other dealer grants greater allowances for trade-ins unless the dealer can show such is the case, e.g. “highest trade-in allowances” or “no other dealer gives more for your trade”.

d. Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless the dealer can show such is the case.

10.8 Layout. The layout of an advertisement shall not convey an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. Watch out for the “Big print giveth and the little print taketh away”.

10.9 Dealer Price Advertising.

a. Allowable Excluded Charges. The advertised price must include all costs and charges for the vehicle advertised, including destination.

THE ONLY CHARGES THAT MAY BE EXCLUDED FROM THE ADVERTISED PRICE ARE TAX, TITLE, LICENSE, AND A FEE OR CHARGE THAT IS ALLOWED OR PRESCRIBED BY LAW. This includes the documentary fee and state inspection.

b. Can Not Qualify Advertised Price. A qualification may not be used when advertising the price of a vehicle such as “with trade,” “with dealer-arranged financing,” “rebate assigned to dealer,” or “with down payment”.

c. Featured Price. The featured price of a new or used motor vehicle must be the price for which the vehicle will be sold to any retail buyer.

Rebates that are not available to the general public cannot be included in the featured price. A secondary price which includes a limited rebate may be advertised; however, this price must be less prominent than the selling price for any retail buyer. Or a statement about the limited rebate may be advertised.

The following is a correct featured price example for a new motor vehicle.

\$15,000 Sale Price \$14,000 w/\$1,000 owner loyalty cash*

MSRP \$20,000, Rebate 2,000, Dealer Discount 3,000 + TTL

*Loyalty cash available to current owners of a 2000 or newer model year (xyz) vehicle. You must show proof of ownership. Trade-in not required.

d. Price Equations. If a price advertisement discloses a rebate or discount, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

The following are acceptable formats for price advertising.

(1) If a discount is disclosed, then the discount must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP).

MSRP	\$20,000
Dealer Discount	1,000
Sale Price	\$19,000

(2) If a rebate is disclosed, then the rebate must be disclosed as a deduction from the advertised price.

Advertised Price	\$18,000
Rebate	500
Sale Price	\$17,500

(3) If both a rebate and discount are disclosed, then the incentives must be disclosed as a deduction from the MSRP.

MSRP	\$20,000
Rebate	500
Dealer Discount	1,000
Sale Price	\$18,500

(4) If the manufacturer offers a discount on a package of options, then that discount should be disclosed above or prior to the MSRP with a total price of the vehicle before the option discount.

Total Vehicle Plus Options	\$21,000
Option Package Discount	1,000
MSRP	\$20,000
Rebate	500
Dealer Discount	1,000
Sale Price	\$18,500

10.10 Identification/ “Loaded”/Illustration.

a. Vehicle Identification. When the price of a motor vehicle is advertised, the model year; make; model line and style or model designation; and whether the vehicle is a used, demonstrator, or a factory executive/official vehicle must be disclosed.



Model Year, Make, Model Line and Style or Model Designation NOT Disclosed - 215.251(a)

b. Expressions such as “Loaded”. Expressions such as “fully equipped,” “factory equipped,” “loaded,” and other such terms shall not be used in any advertisement that contains the price of a vehicle unless the optional equipment of the vehicle is listed.

c. Illustration. An illustration of a motor vehicle used in an advertisement must be substantially the same as that of the vehicle advertised.

For example: An illustration that is NOT substantially the same would be if a Ford F-150, Regular Cab, XL is advertised and the illustration used is that of a Ford F-150, Super Cab, FX4.

10.11 Advertising at Cost or Invoice. The term “dealer’s cost” or other reference to the cost of the vehicle shall not be used. This would include a statement such as “you pay what we pay” which is in reference to the cost of the vehicle.

Additionally, the use of the term “invoice” or “invoice price” in advertising shall not be used. This would include advertising an illustration of an invoice.
Note: In 1994, the United States Court of Appeals, Fifth Circuit, upheld that the use of the word “invoice” in automobile advertisement was inherently misleading.

10.12 Trade-In Allowances. The rule states that no guaranteed trade-in amount or range of amounts shall be used in advertising.

For example: “Get A Minimum of \$2,000 For Your Trade,” “130% Of NADA Book Value For Your Trade,” or “\$1,000 to \$3,000 Guaranteed Trade-In” is a guaranteed trade-in amount or range of amounts, and can NOT be advertised.

A “Push, Pull or Drag” advertisement is okay if no guaranteed trade-in amount or range of amounts is stated.

10.13 Used Vehicles. When a used vehicle is advertised, the vehicle shall be identified as “used” or “pre-owned”.

A used vehicle shall not be advertised in any manner that creates the impression that it is new.

Terms such as “program car,” “special purchase,” “factory repurchase,” or other similar terms are not sufficient to designate a vehicle as used.

10.14 Demonstrators, Factory Executive/Official Vehicles. When these vehicles are advertised, the advertisement must clearly and conspicuously identify the vehicle as a demonstrator or factory executive/official vehicle.

These are new motor vehicles as they have not been subject to a retail sale. These vehicles may not be advertised or sold except by a dealer franchised and licensed to sell that line make of new motor vehicle.

A “Demonstrator” is defined as a new motor vehicle currently in the dealer’s inventory and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership.

A “Factory Executive/Official Vehicle” is defined as a new motor vehicle that has been used exclusively by an executive or official of the dealer’s franchising manufacturer, distributor, or their subsidiaries.




10.15 Auction. Terms such as “auction” or “auction special” shall be used only in connection with a vehicle offered or sold at a bona fide auction.


“Auction” is defined as “the sale of any property by competitive bid”. A dealer may hold an auction of his inventory at the dealership and advertise the sale as an auction if a licensed auctioneer, licensed by the Texas Department of Licensing and Regulation, conducts the auction. The advertisement shall include the auctioneer’s name and license number.

10.16 Free Offers. Don't offer something as "free" if it is not really "free". A free offer should not become part of the negotiations.

FREE OFFERS - 215.257

**IS IT
REALLY
FREE?**



???

**CAN THE VEHICLE BE PURCHASED OR
LEASED FOR A LESSER PRICE WITHOUT THE
FREEBIE?**

**HAS THE PRICE OF THE VEHICLE BEEN
INCREASED TO COVER ALL OR PART OF
THE COST OF THE FREEBIE?**

**DOES THE AD CLEARLY AND
CONSPICUOUSLY DISCLOSE THE
CONDITIONS UNDER WHICH THE FREE
OFFER MAY BE OBTAINED?**

If you answered 'yes' to either of the above questions, then the "free" offer is NOT "free".

10.17 Authorized Dealer. The rule states that the term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a division license to sell those vehicles he is holding himself out as "authorized" to sell.

10.18 Rebate and Financing Rate Advertising by Dealers.

a. If a dealer advertises an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, or other financial inducement or incentive and the dealer contributes to the program, the advertisement shall disclose that the dealer's contribution may affect the final negotiated price of the vehicle.

b. An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor, shall disclose that the dealer pays for or finances the interest or finance charge rate reduction, the amount of the dealer's contribution in either a dollar or percentage amount, and that such arrangement may affect the final negotiated price of the vehicle.

c. An offer to pay, promise to pay, or tender cash to a buyer of a motor vehicle as in a rebate or cash back program may not be advertised, unless it is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or assignee of the retail purchaser.

10.19 Manufacturer Sales; Wholesale Prices. A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the vehicle.

An advertisement shall not use the manufacturer's name or abbreviation in any manner calculated or likely to create an impression that the vehicle is being offered for sale by the manufacturer or distributor.

Terms such as "factory sale," "factory approved," "factory sponsored," "manufacturer sale," "fleet prices," "wholesale prices" or similar terms which indicate sales other than retail sales from the dealer shall not be used.

10.20 Savings Claims; Discounts. A savings claim or discount offer can only be advertised on a **New** motor vehicle. The advertisement must show the difference between the dealer's sale price and the manufacturer's, distributor's or converter's total suggested list or retail price.

a. Acceptable Formats. The following are acceptable formats for advertising a savings claim or discount offer on a new motor vehicle.

(1) If the offer includes only a dealer discount, the advertisement shall disclose that the discount is from the MSRP.

\$2,000 discount off MSRP

(2) If the offer includes a customer rebate and a dealer discount, both amounts must be disclosed in the savings.

\$2,000 savings off MSRP (\$1,500 dealer discount and \$500 rebate)

(3) If a savings claim discloses a manufacturer's option package discount, then that discount must be disclosed prior to the discount off MSRP. The savings claim shall be advertised as a total savings.

Total Savings \$3,000 (\$1,000 option package discount, \$1,500 dealer discount off MSRP, and \$500 rebate)

b. Featured Savings. The featured savings claim for a new motor vehicle must be the savings which is available to everyone.

Rebates that are not available to the general public cannot be included in the featured savings. A secondary savings which includes a limited rebate may be advertised; however, this savings must be less prominent than the savings which is available to everyone. Or a statement about the limited rebate may be advertised.

The following is a correct featured savings example.

Save \$5,000 Off MSRP

Save \$6,000 Off MSRP w/\$1,000
owner loyalty cash*

Savings includes \$2,000 rebate and \$3,000 dealer discount

*Loyalty cash available to current owners of a 2000 or newer model year (xyz) vehicle. You must show proof of ownership. Trade-in not required.

c. Aftermarket Options. If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle.

d. Statement such as “Up To”. A savings claim must be a specific amount. Statements such as “up to,” “as much as,” “from,” or a range of amounts shall not be used when advertising a savings claim or discount offer.

e. Used Vehicles. A SAVINGS CLAIM OR DISCOUNT OFFER MAY **NOT** BE ADVERTISED ON USED MOTOR VEHICLES.

10.21 Bankruptcy/Liquidation Sale. A sale may not be advertised with the phrase “going out of business,” “closing out,” “shutting doors forever,” “liquidation sale,” “bankruptcy sale” or similar phrases indicating that a dealership is ceasing business unless the dealership is closing its operations.

A new or used motor vehicle liquidation sale, e.g. “Used Vehicle Liquidation Event”, may not be advertised when the dealer is not ceasing the business of selling new or used vehicles. One exception for new vehicles only is when production of a model year has stopped, and the new motor vehicle dealer does not have any pending orders for that model year. A dealer may then advertise a liquidation sale of those model year vehicles that still remain in the dealer’s inventory.

10.22 Lowest Price Claims. A lowest price claim, best price claim, best deal claim, or other similar superlative claims shall not be used in advertising. The only exception is if the dealer makes the superlative claim applicable only to that dealer, e.g. “Our lowest price of the month on any in stock new Explorer XLT”.

A dealer may advertise a “meet or beat” guarantee. If a cash amount is advertised with the guarantee, then the advertisement must clearly and conspicuously disclose the conditions and requirements necessary in order for a person to receive the cash amount. Offering a beat guarantee does not mean that the advertising dealer has, for example, the lowest price.

10.23 Sales Payment Disclosures. This rule is intended to ensure that all important terms of a consumer credit transaction (closed-end credit) appear in the advertisement. The rule incorporates the requirements set forth by The Federal Reserve Board Regulation Z which implements the Truth in Lending Act.

If an advertisement contains a “triggering term”, then the advertisement also must include other major terms. The statement “no down payment” does not trigger additional disclosure. Additionally, the APR is not a “triggering term”.

Sales Payment Disclosure – 215.264 (Regulation Z)

Triggering Terms:

- Amount of the down payment (either a percentage or dollar amount)
- Amount of any payment (either a percentage or dollar amount)
- Number of payments
- Period of repayment
- Amount of any finance charge

Must Include:

- Amount or percentage of the down payment;
- Terms of repayment (number of months/amount per month) including any balloon payment;
- The annual percentage rate (APR); and
- The amount of annual percentage rate, if increased, after consummation.

The term of repayment from which the amount per month can be determined may be expressed using unit cost (monthly charge per \$1,000 financed).

For example: The unit cost based on 2.9% APR financing for 36 months is \$29.04 per \$1,000 financed.

10.24 Lease Advertisements/Lease Payment Disclosures.

a. Lease Advertisement. The advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Terms or phrases that do not use the term “lease” do not constitute adequate disclosure of a lease.

b. Lease Payment Disclosures. This rule is intended to ensure that all major terms of a consumer lease are included in the advertisement. The rule incorporates the requirements set forth by The Federal Reserve Board Regulation M which implements the Consumer Leasing Act.

If an advertisement contains a “triggering term”, then the advertisement also must include certain specific disclosures.

Lease Payment Disclosure - 215.265(a) (Regulation M)

Triggering Terms:

- Amount of any payment
- A statement of any capitalized cost reduction or other payment prior to or at consummation or by delivery, if delivery occurs after consummation
- A statement that no payment is required

Must Clearly And Conspicuously Include:

- A statement that the transaction advertised is a lease;
- The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
- The number, amounts, and due dates or periods of scheduled payments under the lease;
- A statement of whether or not a security deposit is required; and
- A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability, if any, is based on the difference between the residual value and realized value. (if open-end lease).

A “closed-end lease” is a lease in which the lessee is not responsible for the difference if the actual value of the vehicle at the scheduled end of the lease is less than the residual value.

An “open-end lease” is a lease in which the amount the lessee owes at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

c. Other Considerations in Lease Advertising.

(1) Except for the periodic payment, a reference to a charge that is part of the total amount due at consummation or delivery cannot be more prominent than the total amount due at consummation or delivery.

(2) If a lessor provides a percentage rate in an advertisement, a notice stating that “this percentage may not measure the overall cost of financing this lease” shall accompany the rate disclosure. The term “annual percentage rate,” “annual lease rate,” or any equivalent term shall not be used.

(3) A multi-page advertisement or an electronic advertisement (such as an advertisement appearing on an internet web site), that provides a table or schedule of the required disclosures is considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(4) A merchandise tag stating any “triggering term” (see paragraph 10.24 (b) – Lease Payment Disclosure) may comply with the required disclosures by referring to a sign or display prominently posted in the Lessor’s place of business that contains a table or schedule of the required disclosures.

(5) An advertisement made through television or radio stating any “triggering term” must state in the advertisement: that the transaction is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation; and the number, amounts, and due dates or periods of scheduled payments under the lease. The advertisement also must list a toll-free telephone number along with a reference that such number may be used by consumers to obtain the required disclosure information, or direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and date of the publication, with a statement that the required disclosure information is included in the advertisement.

The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast. The Lessor shall provide the required disclosure information orally or in writing upon request. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

10.25 Fleet Prices. Terms such as “fleet prices” or “fleet sales” or other terms implying that retail individual customers will be afforded the same price and/or discount as multi purchase commercial businesses shall not be used in advertising. The reason these terms are prohibited, is that there are no set fleet prices. Individual fleets negotiate prices based on volume and other factors similar to any other retail sale. Accordingly, representing fleet prices is illusory and offers no genuine benchmark for savings.

10.26 Bait Advertisement. Bait advertising is an alluring but insincere offer to sell a product which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads to persons interested in buying merchandise of the type advertised. Bait advertisement is prohibited.

10.27 Brokering. Brokering motor vehicles is prohibited in Texas. A broker is defined by law as a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a motor vehicle. Dealers are exempted from the prohibition however, they may only broker those line makes or types of vehicles that they are licensed to sell. Bird-dog fees are by nature broker fees and those dealers who offer bird-dog fees to persons may violate the broker prohibition. It is prohibited for dealers to advertise offering a broker fee (referral fee). See Chapter 4, Section 4.34 for more information.

10.28 Internet Advertising. Dealers should be cautious about contracting with those Internet entities who advertise for them on the Internet. These entities may be violating the advertising rules and any dealers who work with them could be subject to aiding and abetting a violation. Just as a dealer is liable for the acts and omissions of their advertising agents, the dealer is also liable for advertising violations on the Internet. Be sure to review a website for ad violations before signing a contract with any entity. See Compliance and Dealer Operations Chapter, Section 4.35 for more information.

A recent change in the law allows those dealers who advertise on the Internet directly through their own websites can now sell a vehicle to those persons who respond to that advertisement without having those people come to their dealership. Responses to non-Internet ads still require the potential buyers to visit the dealership at least once to avoid the off-site sale rule.